THE HONOURABLE SRI JUSTICE E. DHARMA RAO

W.P. No. 17198 of 2005

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Dated: 04.08.2005

Between:-

Attimalla Venkataratnam s/o Venkata Subbaiah,

Aged about 52 years, R/o III lane,Laxmipuram

Guntur, Guntur District.

..PETITIONER

And

Municipal Corporation of Guntur, represented by its

Commissioner, Guntur and another.

…RESPONDENTS

O R D E R

Seeking to issue a Mandamus, declaring the action of the respondents in issuing the impugned proceedings bearing U.C. No. 3/05 Division No. II – U.C. B.A. No. 581/04/G1, dated 28.07.2005, issued by the 1st respondent, as illegal and arbitrary, the present writ petition is filed.

The case of the petitioner is that he has acquired 770 sq. yards of land situated in 1st lane, 5th Cross Road, Ramannapet, Guntur, within the limits of the respondent-corporation. He submitted an application to the respondent corporation for

construction of apartment in the said land and accordingly the respondent corporation granted permission bearing proceedings B.A. No. 581/2004/G1, dated 23.02.2005 for construction of building consisting of stilt floor for parking, ground, first, second, third and fourth floors for residential purpose and he has completed the construction of the building as per the sanctioned plan except some minor deviations. While so, the 1st respondent corporation issued the proceedings in U.C. No. 3/05,Division No. II – U.C. B.A. No. 581/04/G1, dated 28.07.2005, stating that he has committed certain violations under sec. 452 of M.C.H. Act. It is further case of the petitioner that the respondent did not give any prior notice other than the impugned proceedings served upon him on 01.08.2005. Section 452 of the Act clearly stipulates that a show cause notice shall be issued before passing the order under sub-section (2) of Section 452 of the Act . No such show cause notice was issued giving him opportunity to explain as to the alleged deviations as contemplated under G.O.Ms. No. 423, dated 30.07.1998. After issuance of the said notice, the officials of the respondent corporation are visiting the building regularly and informing that they would take necessary coercive action in respect of the said building for the alleged deviations from the sanctioned plan. Hence, the petitioner came up with the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing counsel for the respondents.

The writ petition is filed against the impugned notice, dated 28.07.2005, issued under Sections 42 (1) and 43(3) of Andhra Pradesh Urban Areas (Development) Act, 1975 and Section 452 of the M.C.H Act stating that the petitioner made constructions in contravention of the sanctioned plan. It is not indicated in the notice that the petitioner is directed to submit his explanation on the contraventions pointed out in the impugned notice. The respondent ought to have issued a show cause notice prior to the impugned notice calling explanation of the petitioner.

Having regard to the facts and circumstances of the case, I deem it appropriate to dispose of the writ petition at the admission stage treating the Notice under Section 42 (1) and 43(3) of A.P. Urban Areas (Development) Act, 1975, and Section 452 of the M.C.H. Act as Show Cause Notice directing the petitioner to submit his explanation within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondents are directed to consider the explanation of the

petitioner and pass appropriate orders on merits and in accordance with law within four weeks, after giving reasonable opportunity of hearing the petitioner and till such time, the respondents are directed not to take any stringent action of demolition on the basis of the deviations committed by the petitioner during the course of construction of the apartments in an extent of 770 sq. yards of land situated at 1st lane, 5th cross road, Ramannapet, Guntur District as per sanctioned plan proceedings B.A.No. 581/2004/G1, dated 23.02.2005.

Subject to the above directions, this writ petition is disposed of. No order as to costs.

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E. DHARMA RAO, J

4th August, 2005

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